

## § 245.11

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forth in §245.7 and the nondiscrimination practices set forth in §245.8.

(b) The policy statement submitted by each local educational agency shall be accompanied by a copy of the application form to be used by the school and of the proposed letter or notice to parents.

(c) Each local educational agency shall amend its permanent free and reduced price policy statement to reflect substantive changes. Any amendment to a policy shall be approved by the State agency prior to implementation, or as provided in paragraph (e) of this section. Each year, if a local educational agency does not have its policy statement approved by the State agency, or FNSRO where applicable, by October 15, reimbursement shall be suspended for any meals or milk served until such time as the local educational agency's free and reduced price policy statement has been approved by the State agency, or FNSRO where applicable. Furthermore, no commodities donated by the Department shall be used in any school after October 15, until such time as the local educational agency's free and reduced price policy statement has been approved by the State agency, or FNSRO where applicable. Once the local educational agency's free and reduced price policy statement has been approved, reimbursement may be allowed, at the discretion of the State agency, or FNSRO where applicable, for eligible meals and milk served during the period of suspension.

(d) If any free and reduced price policy statement submitted for approval by any local educational agency to the State agency, or FNSRO where applicable, is determined to be not in compliance with the provisions of this part, the local educational agency shall submit a policy statement that does meet the provisions within 30 days after notification by the State agency, or FNSRO where applicable.

(e) When revision of a local educational agency's approved free and reduced price policy statement is necessitated because of a change in the family-size income standards of the State agency, or FNSRO where applicable, or because of other program changes, the local educational agency shall have 60

days from the date the State agency announces the change in which to have its revised policy statement approved by the State agency, or FNSRO where applicable. In the event that a local educational agency's proposed revised free and reduced price policy statement has not been submitted to, and approved by, the State agency, or FNSRO where applicable, within 60 days following the public announcement by the State agency, reimbursement shall be suspended for any meals or milk served after the end of the 60-day period. No commodities donated by the Department shall be used in any school after the end of the 60-day period, until such time as the local educational agency's free and reduced price policy statement has been approved by the State agency, or FNSRO where applicable. Reimbursement may be allowed at the discretion of the State agency, or FNSRO where applicable, for eligible meals and milk served during the period of suspension once the local educational agency's free and reduced price policy statement has been approved by the State agency, or FNSRO where applicable. Pending approval of a revision of a policy statement, the existing statement shall remain in effect.

(Sec. 8, Pub. L. 95–627, 92 Stat. 3623 (42 U.S.C. 1758); sec. 5, Pub. L. 95–627, 92 Stat. 3619 (42 U.S.C. 1772); 44 U.S.C. 3506; sec. 803, Pub. L. 97–35, 95 Stat. 521–535 (42 U.S.C. 1758))

[35 FR 14065, Sept. 4, 1970, as amended at 38 FR 14958, June 7, 1973; Amdt. 6, 39 FR 30339, Aug. 22, 1974; Amdt. 8, 40 FR 57208, Dec. 8, 1975; Admt. 13, 44 FR 33049, June 8, 1979; 47 FR 746, Jan. 7, 1982; 48 FR 12511, Mar. 25, 1983; 64 FR 50744, Sept. 20, 1999; 64 FR 72474, Dec. 28, 1999; 72 FR 63796, Nov. 13, 2007]

### §245.11 Action by State agencies and FNSROs.

(a) Each State agency, or FNSRO where applicable, shall, for schools under its jurisdiction:

(1) As necessary, each State agency or FNSRO, as applicable, shall issue a prototype free and reduced price policy statement and any other instructions to ensure that each local educational agency as defined in §245.2 is fully informed of the provisions of this part. If the State elects to establish for all schools a maximum price for reduced price lunches that is less than 40 cents,

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the State shall establish such price in its prototype policy. Such State shall then receive the adjusted national average factor provided for in §210.4(b); (2) prescribe and publicly announce by July 1 of each fiscal year, in accordance with §245.3(a), family-size income standards. Any standards prescribed by FNSRO with respect to nonprofit private schools shall be developed by FNSRO after consultation with the State agency.

(a-1) When a revision of the family-size income standards of the State agency, or FNSRO where applicable, is necessitated because of a change in the Secretary's income poverty guidelines or because of other program changes, the State agency shall publicly announce its revised family-size income standards no later than 30 days after the Secretary has announced such change.

(b) State agencies, and FNSRO where applicable, shall review the policy statements submitted by school-food authorities for compliance with the provisions of this part and inform the school-food authorities of any necessary changes or amendments required in any policy statement to bring such statement into compliance. They shall notify school-food authorities in writing of approval of their policy statements and shall direct them to distribute promptly the public announcements required under the provisions of §245.5.

(c) Each State agency, or FNSRO where applicable, shall instruct local educational agencies under their jurisdiction that they may not alter or amend the eligibility criteria set forth in an approved policy statement without advance approval of the State agency, or FNSRO where applicable.

(d) Not later than 10 days after the State agency, or FNSRO where applicable, announces its family-size income standards, it shall notify local educational agencies in writing of any amendment to their free and reduced price policy statements necessary to bring the family-sized income criteria into conformance with the State agency's or FNSRO's family-size income standards.

(e) Except as provided in §245.10, the State agency, or FNSRO where applica-

ble, shall neither disburse any funds, nor authorize the distribution of commodities donated by the Department to any school unless the local educational agency has an approved free and reduced price policy statement on file with the State Agency, or FNSRO where applicable.

(f) Each State agency, or FNSRO where applicable, shall, in the course of its supervisory assistance, review and evaluate the performance of local educational agencies and of schools in fulfilling the requirements of this part, and shall advise local educational agencies of any deficiencies found and any corrective action required to be taken.

(g) The State agency must notify FNS whether the TANF Program in their State is comparable to or more restrictive than the State's Aid to Families with Dependent Children Program that was in effect on June 1, 1995. Automatic eligibility and direct certification for TANF households is allowed only in States in which FNS has been assured that the TANF standards are comparable to or more restrictive than the program it replaced. State agencies must inform FNS when there is a change in the State's TANF Program that would no longer make households participating in TANF automatically eligible for free school meals.

(h) The State agency shall take action to ensure the proper implementation of Provisions 1, 2, and 3. Such action shall include:

(1) *Notification.* Notifying school food authorities of schools implementing Provision 2 and/or 3 that each Provision 2 or Provision 3 school must return to standard eligibility determination and meal counting procedures or apply for an extension under Provision 2 or 3. Such notification must be in writing, and be sent no later than February 15, or other date established by the State agency, of the fourth year of a school's current cycle;

(2) *Return to standard procedures.* Returning the school to standard eligibility determination and meal counting procedures and fiscal action as required under §210.19(c) of this chapter if the State agency determines that records were not maintained; and

(3) *Technical assistance.* Providing technical assistance, adjustments to the level of financial assistance for the current school year, and returning the school to standard eligibility determination and meal counting procedures, as appropriate, if a State agency determines at any time that:

- (i) The school or school food authority has not correctly implemented Provision 1, Provision 2 or Provision 3;
- (ii) Meal quality has declined because of the implementation of the provision;
- (iii) Participation in the program has declined over time;
- (iv) Eligibility determinations or the verification procedures were incorrectly conducted; or
- (v) Meal counts were incorrectly taken or incorrectly applied.

(4) *State agency recordkeeping.* State agencies shall retain the following information annually for the month of October and, upon request, submit to FNS:

- (i) The number of schools using Provision 1, Provision 2 and Provision 3 for NSLP;
- (ii) The number of schools using Provision 2 and Provision 3 for SBP only;
- (iii) The number of extensions granted to schools using Provision 2 and Provision 3 during the previous school year;
- (iv) The number of extensions granted during the previous year on the basis of Food Stamp/FDPIR data;
- (v) The number of extensions granted during the previous year on the basis of Temporary Assistance for Needy Families (TANF) data;
- (vi) The number of extensions granted during the previous year on the basis of local data collected by a city or county zoning and/or economic planning office;
- (vii) The number of extensions granted during the previous year on the basis of applications collected from enrolled students;
- (viii) The number of extensions granted during the previous year on the basis of statistically valid surveys of enrolled students; and
- (ix) The number of extensions granted during the previous year on the basis of alternate data as approved by the State agency's respective FNS Regional Office.

(5) *State agency approval.* Prior to approval for participation under Provision 2 or Provision 3, State agencies shall ensure school and/or school food authority program compliance as required under §§ 210.19(a)(4) and 220.13(k) of this chapter.

(i) No later than March 1, 2005 and by March 1st each year thereafter, each State agency must collect annual verification data from each local educational agency as described in § 245.6a(c) and in accordance with guidelines provided by FNS. Each State agency must analyze these data, determine if there are potential problems, and formulate corrective actions and technical assistance activities that will support the objective of certifying only those children eligible for free or reduced price meals. No later than April 15, 2005 and by April 15 each year thereafter, each State agency must report to FNS the verification information in a consolidated electronic file that has been reported to it as required under § 245.6a(c), by local educational agency, and any ameliorative actions the State agency has taken or intends to take in local educational agencies with high levels of applications changed due to verification. Contingent upon new funding to support this purpose, FNS will also require each State agency to report the aggregate number of students who were terminated as a result of verification but who were reinstated as of February 15th. The first report containing this data element would be required in the school year beginning July 1, 2005 and each school year thereafter. State agencies are encouraged to collect and report any or all verification data elements before the required dates.

(Secs. 801, 803, 812; Pub. L. 97-35, 95 Stat. 521-535 (42 U.S.C. 1753, 1758, 1759(a), 1773, 1778))

[35 FR 14065, Sept. 4, 1970, as amended at 38 FR 14958, June 7, 1973; Amdt. 8, 40 FR 57208, Dec. 8, 1975; 44 FR 1364, Jan. 5, 1979; 46 FR 51368, Oct. 20, 1981; 48 FR 12511, Mar. 25, 1983; 52 FR 19276, May 22, 1987; 64 FR 50744, Sept. 20, 1999; 64 FR 72474, Dec. 28, 1999; 66 FR 48333, Sept. 20, 2001; 68 FR 53490, Sept. 11, 2003; 72 FR 63796, Nov. 13, 2007]

EFFECTIVE DATE NOTE: At 68 FR 53490, Sept. 11, 2003, § 245.11(i) was added. This paragraph contains information collection and

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recordkeeping requirements and will not become effective until approval has been given by the Office of Management and Budget.

### § 245.12 Fraud penalties.

(a) Whoever embezzles, willfully misapplies, steals, or obtains by fraud any funds, assets, or property provided under this part, whether received directly or indirectly from the Department, shall—

(1) If such funds, assets, or property are of a value of \$100 or more, be fined not more than \$25,000 or imprisoned not more than five years of both; or

(2) If such funds, assets, or property are of a value of less than \$100, be fined not more than \$1,000 or imprisoned not more than one year or both.

(b) Whoever receives, conceals, or retains to his use or gain funds, assets, or property provided under this part, whether received directly or indirectly from the Department, knowing such funds, assets, or property have been embezzled, willfully misapplied, stolen, or obtained by fraud, shall be subject to the same penalties provided in paragraph (a) of this section.

(Sec. 10(a), Pub. L. 95-627, 92 Stat. 3623 (42 U.S.C. 1760); sec. 14, Pub. L. 95-627, 92 Stat. 3625-3626)

[Amtd. 14, 44 FR 37901, June 29, 1979, as amended at 64 FR 50744, Sept. 20, 1999]

### § 245.13 Information collection/record-keeping—OMB assigned control numbers.

7 CFR section where requirements are described	Current OMB control number
245.3 (a), (b) .....	0584-0026
245.4 .....	0584-0026
245.5 (a), (b) .....	0584-0026
245.6 (a), (b), (c), (e) .....	0584-0026
245.7(a) .....	0584-0026
245.9 (a), (b), (c) .....	0584-0026
245.10 (a), (d), (e) .....	0584-0026
245.11 (a), (a-1), (b), (c), (d), (f) .....	0584-0026
245.13(a)-(c) .....	0584-0026

[72 FR 68985, Dec. 6, 2007, as amended at 73 FR 11312, Mar. 3, 2008]

## PART 246—SPECIAL SUPPLEMENTAL NUTRITION PROGRAM FOR WOMEN, INFANTS AND CHILDREN

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AUTHORITY: 42 U.S.C. 1786.

SOURCE: 50 FR 6121, Feb. 13, 1985, unless otherwise noted.